



SMALL BUSINESS ADMINISTRATION

[Docket No. SBA-2020-0048]

Termination of Nonmanufacturer Rule Class Waiver

AGENCY: U.S. Small Business Administration.

ACTION: Notification of intent to terminate the class waiver to the Nonmanufacturer Rule for radiology equipment.

SUMMARY: The U.S. Small Business Administration (SBA) is considering terminating a class waiver of the Nonmanufacturer Rule (NMR) for irradiation apparatus manufacturing, computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; fluoroscopes manufacturing; fluoroscopic X-ray apparatus and tubes manufacturing; generators, X-ray, manufacturing; irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing under manufacturing categorized under North American Industry Classification System (NAICS) code 334517 and Product Service Code (PSC) 6525.

DATES: Comments and source information must be submitted on or before xx/xx/xxxx.

ADDRESSES: You may submit comments and source information via the Federal Rulemaking Portal at <https://www.regulations.gov> under Docket ID SBA-2020-1148]. If you wish to submit confidential business information (CBI) as defined in the User Notice

at <http://www.regulations.gov>, please submit the information to Carol Hulme, Attorney Advisor, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether the information will be published.

FOR FURTHER INFORMATION CONTACT: Carol Hulme, Attorney Advisor, by telephone at 202-205-6347 or by email at Carol-Ann.Hulme@sba.gov.

SUPPLEMENTARY INFORMATION: An awardee of a Federal small business set-aside contract valued over \$250,000.00, service-disabled veteran-owned small business contract, HUBZone contract, women-owned small business contract, or 8(a) contract must provide its own product or that of a small business manufacturer unless a waiver is in place. If the above-identified class waiver is terminated, small businesses will no longer be authorized to provide the product of any manufacturer regardless of size on the identified items, unless a Federal contracting officer obtains an individual waiver to the NMR.

Section 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR §121.406(b), require that recipients of Federal supply contracts issued as a small business set-aside (except as stated below), service-disabled veteran-owned small business (SDVO SB) set-aside or sole source contract, Historically Underutilized Business Zone (HUBZone) set-aside or sole source contract, WOSB (women-owned small business) or economically disadvantaged women-owned small business (EDWOSB) set-aside or sole source contract, 8(a) set-aside or sole source contract, partial set-aside, or set aside of an order against a multiple award contract provide the product of a small business manufacturer or processor if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). Note that the NMR does not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold but continues to apply to socioeconomic categories over the micropurchase threshold.

Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market. The SBA defines "class of products" based on a combination of (1) the six-digit NAICS code, (2) the four-digit PSC, and (3) a description of the class of products. As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be

considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

In accordance with the SBA's regulations at 13 CFR 121.1204(a)(7), SBA will periodically review existing class waivers to the NMR to determine whether small business manufacturers or processors have become available to participate in the Federal market. Upon receipt of information that such a small business manufacturer or processor exists, the SBA will announce its intent to terminate the NMR waiver for a class of products. 13 CFR 121.1204(a)(7)(ii). Unless public comment reveals no small business exists for the class of products in question, SBA will publish a Final Notice of Termination in the Federal Register.

On October 31, 2007, the SBA published in the Federal Register a notice of intent to waive the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing (X-Ray Equipment and Supplies). The comments submitted in response failed to establish the existence of a small business manufacturer of these products. As such, on December 26, 2007, after the comment and notice period passed, SBA issued a class waiver for those products effective January 10, 2008. That notice can be found at 77 FR 73057.

On April 20, 2020, SBA received a request to terminate the previously issued waiver. The requester provided information that established the existence of a small business manufacturer of the identified products. Thus SBA is proposing to terminate the class waiver for irradiation apparatus manufacturing, computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; fluoroscopes manufacturing; fluoroscopic X-ray apparatus and tubes manufacturing; generators, X-ray, manufacturing; irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing under NAICS code 334517 and PSC 6525. The public is invited to comment or provide source information on the proposed termination of the NMR waiver for these products.

More information on the NMR and class waivers can be found at
<https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/non-manufacturer-waivers>.

David Wm. Loines,
Director, Office of Government Contracting.

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